

**NORTHERN MOTORS, INC., PETITIONER, VS. THE HONORABLE
JORGE R. COQUIA, EXECUTIVE JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA, HONESTO ONG, THE SHERIFF OF MANILA,
DOMINADOR Q. ...**

G.R. No. L-40018. March 21, 1975

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari to nullify the resolution and order of the respondent Judge dated January 17 and 23, 1975, respectively, and for injunction against the respondent sheriffs from proceeding with the execution sale of the taxicabs subject matter of the instant case.

Sometime in mid-1974, petitioner Northern Motors, Inc. sold 200 units of Holden Torana cars to Manila Yellow Taxicab Co., Inc. on installment basis with corresponding chattel mortgages thereon. Of the 200 units, the mortgage on 172 units was assigned to Filinvest Credit Corporation.

In December, 1974, the respondent sheriff and/or Acting Executive Sheriff of Manila, thru a deputy sheriff, levied on 20 of the aforesaid 200 units to satisfy the judgment in Civil Case No. 71584, entitled "Tropical Commercial Co., Inc. vs. Manila Yellow Taxicab Co., Inc., et al.," Court of First Instance of Manila, Branch XIII, which judgment for P110,000.00 was assigned on December 9, 1974 for P15,000.00 to one Loida Cortez who, a day after, reassigned the same to respondent Honesto Ong for valuable consideration. Of the 20 units levied on, 8 were mortgaged to petitioner Northern Motors, Inc., and the 12 units to Filinvest Credit Corporation. The sale of the aforesaid 20 units was scheduled for auction sale by the respondent sheriff on December 18, 1974 at 10:00 o'clock in the morning. Both petitioner Northern Motors, Inc. and Filinvest Credit Corporation filed their corresponding third-party claims. Because of these third-party claims, the scheduled sale of the 20 units was postponed to 4:00 o'clock p.m. of the same day, December 18, 1974, to enable the Tropical Commercial Co., Inc. and/or its assignee to file the indemnity bonds, which bond/bonds was issued by Filriters Guaranty Assurance Corporation. Shortly before 3:30 p.m. of the same day, December 18, 1974, the representatives of petitioner and Filinvest Credit Corporation proceeded to the place of the auction sale but was met by Deputy Sheriff Cesar S. Capili and told that the auction sale of the 20 units had already been consummated.

On January 3, 1975, respondent Judge, upon petition of Tropical Commercial Corporation, issued a resolution cancelling the indemnity bonds filed by Filriters Guaranty Assurance Corporation for the December 18, 1974 auction sale on the ground of lack of opposition and that no third-party claim was filed. This resolution was later amended in a resolution dated January 6, 1975, but maintaining the cancellation of the bonds on the grounds of absence of opposition and on a new ground that the court had ruled in a similar case that "the third party claimant is, if at all, merely a mortgage and not a claimant of ownership." Petitioner moved to reconsider which motion was denied in a resolution dated January 17, 1975.

Meanwhile, the respondent sheriffs and/or Acting Executive Sheriff, thru Cesar S. Capili, again levied on 35 more

Torana Taxicab unit of the Manila Yellow Taxicab Co., 7 of which are mortgaged to petitioner and 28 to the Filinvest Credit Corporation to satisfy the balance of the judgment in the principal case, and set the same for auction sale at 10:00 o'clock in the morning of January 23, 1975. In due course, petitioner and Filinvest Credit Corporation filed their corresponding third-party claims.

Petitioner also filed an Urgent Motion to Stop the Execution Sale of the 7 out of the 35 units additionally levied upon and to hold the disposition of the proceeds of the December 18, 1974 auction sale or of any subsequent sale. This motion, however, was also denied by the respondent Judge in the disputed resolution of January 17, 1975.

Filinvest Credit Corporation then filed a Motion for Intervention with Application for Issuance Ex Parte of Writ of Preliminary Injunction/Restraining Order. On the day of the hearing of the motion, petitioner joined in and orally manifested that a suit for replevin has been filed by petitioner for the recovery of the 7 out of 35 units scheduled for auction sale and moved that pending resolution of the question of possession of the units, the execution sale thereof be stopped. In an order dated January 23, 1975, respondent Judge postponed the scheduled auction sale and ordered that the same shall proceed at 10:00 o'clock in the morning of the following day, January 24, 1975, "unless there is a restraining order issued by a higher court."

Hence, the instant petition for certiorari and injunction by petitioner Northern Motors, Inc. On January 24, 1975, Filinvest Credit Corporation filed with this Court a Manifestation and Urgent Motion praying that, in the event a writ of preliminary injunction or restraining order is issued, the same should cover as well the execution sale of the 28 units claimed by them. On the same day, this Court granted and issued the restraining order prayed for in the petition. On January 29, 1975, Filinvest Credit Corporation filed a petition to intervene in the instant case, which was allowed by Us on February 5, 1975.

The issue to be resolved is whether or not the respondent Judge acted with grave abuse of discretion in denying petitioner's and intervenor's third-party claims.

Section 17, Rule 39 of the Revised Rules of Court provides for the proceedings where a property levied upon is claimed by a third person, the pertinent portion of which, reads:

"If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the Court issuing the writ of execution.

The officer is not liable for damages, for the taking or keeping of the property, to any third party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action.
x x x."

Pursuant to the above provision, a third-party claimant has two remedies, such as, an action for damages against the sheriff to be brought within 120 days from the filing of the bond, and a separate and independent action to vindicate his claim to the property. In the case at bar, petitioner's and intervenor's remedy against the bond proved to be unavailing because of the disputed order of the respondent Judge cancelling the indemnity bond. Such an order as well as the order denying a motion to reconsider the same in effect discarded or quashed the third-party claims. What then would the remedy be of the third-party claimants?

In the recent case of *Serra vs. Rodriguez*, G.R. No. L-25546, April 22, 1974 (56 SCRA 538), this Court (First Division), thru Mr. Justice Makasiar, ruled:

"From the denial of a third-party claim to defeat the attachment caused to be levied by a creditor, neither an appeal nor a petition for certiorari is the proper remedy (see *Santos vs. Mojica*, L-19618, Feb. 18, 1964, 10 SCRA 318, 320-321; *Potenciano vs. Dineros*, 97 Phil. 196, 200). The remedy of petitioner would be to file a separate and independent action to determine the ownership of the attached property or to file a complaint for damages chargeable against the bond filed by the judgment creditor in favor of the provincial sheriff." (Underlining Supplied).

In *Lara vs. Bayona*, L-7920, May 10, 1955, this Court, thru Mr. Justice Concepcion, later Chief Justice, in denying the petition for certiorari to set aside the order of the lower court quashing the third-party claim of a chattel mortgagee, held:

"Pursuant to this provision, nothing contained therein shall prevent petitioner 'from vindicating his claim to the property by any proper action.' Neither does the order complained of deprive petitioner herein of the opportunity to enforce his alleged rights by appropriate proceedings. In short, he has another 'plain, speedy and adequate remedy in the ordinary course of law,' and, hence is not entitled either to a writ of certiorari or to a writ of prohibition. (Rule 67, Sections 1 and 2, Rules of Court)."

At any rate, even if petitioner and intervenor failed in their respective third-party claims, their right to the motor vehicles subject of the execution sale is not completely lost, for the rule reserves to them the right to vindicate their claim in a proper action. To be sure, petitioner and intervenor had already secured writs of replevin to recover possession of the property in dispute. Besides, the chattel mortgage lien attaches to the property wherever it may be. In other words, the buyer acquires the property subject to such liens and encumbrances as existed thereon at the time of the execution (*Lara vs. Bayona*, supra).

We believe the issues discussed by the petitioner and intervenor herein should be threshed out not in this proceedings but in an ordinary action as adverted to above. We further deem not to delve upon the merits of the case as it might prejudice the case for replevin filed by petitioner and intervenor in the Court of First Instance.

WHEREFORE, the petition is hereby denied, and the temporary restraining order heretofore issued dissolved, without pronouncement as to costs.

Makalintal, C.J., (Chairman), Fernando, Barredo, and Antonio, JJ., concur.

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